STATE BAR COURT
REVIEW DEPARTMENT

In the Matter of

RESPONDENT H

A Member of the State Bar

No. 89-O-11979

Filed November 13, 1992

SUMMARY

Respondent settled contingent fee cases for two clients who had previously been represented by another attorney ("X"). Respondent informed X of the settlements, stating that unless X objected by a certain date, respondent would endorse X's name to the drafts and pay X's share of the fees out of respondent's trust account. Respondent also disputed the amount of X's claimed fees. When X did not timely reply to respondent's communications, respondent had his staff endorse the drafts, deposited them in his trust account, and disbursed the settlement proceeds to the clients, to their medical providers, and to himself for his fee. X was holding in trust funds of one of the clients which respondent believed were sufficient to cover X's fees, and respondent and X subsequently resolved the fee dispute. X complained to the State Bar, and respondent was charged with committing acts of moral turpitude and dishonesty, and with violating trust account rules. The hearing judge dismissed the charges. (Hon. Christopher W. Smith, Hearing Judge.)

The examiner requested review, contending that respondent should have been found culpable on both charges. The review department affirmed the dismissal. It held that respondent's direction to his staff to endorse the drafts, based on his reasonable belief that X's silence constituted consent, was not an act of moral turpitude or dishonesty. Noting that the evidence did not establish that X had a lien on the clients' recovery, the review department concluded that funds held for a client on which another attorney has a claim for fees for services rendered are not held in trust for the other attorney. Respondent therefore did not violate the charged provisions of the trust account rules by failing to hold the disputed amount in trust pending resolution of X's fee claim.

COUNSEL FOR PARTIES

For Office of Trials: Teresa J. Schmid

For Respondent: Respondent H, in pro. per.

Editor's note: The summary, headnotes and additional analysis section are not part of the opinion of the Review Department, but have been prepared by the Office of the State Bar Court for the convenience of the reader. Only the actual text of the Review Department's opinion may be cited or relied upon as precedent.

HEADNOTES

[1] **101 Procedure—Jurisdiction**
204.90 Culpability—General Substantive Issues
221.00 State Bar Act—Section 6106
280.00 Rule 4-100(A) [former 8-101(A)]
280.50 Rule 4-100(B)(4) [former 8-101(B)(4)]
A disciplinary proceeding is seldom the proper forum for attorney fee disputes. In a matter arising from a dispute between attorneys, where respondent did not mishandle any sum that could be considered trust funds and respondent's instruction to staff to endorse the other attorney's name to settlement drafts was not dishonest, corrupt, or reflective of bad moral character, the review department affirmed the dismissal of the proceeding.

[2] **162.11 Proof—State Bar's Burden—Clear and Convincing**
Disciplinary charges must be proved by the State Bar examiner by clear and convincing evidence. All reasonable doubts must be resolved in favor of the accused attorney. If equally reasonable inferences may be drawn from a proven fact, the inference leading to innocence must be chosen.

[3 a-d] **163 Proof of Wilfulness**
164 Proof of Intent
204.10 Culpability—Wilfulness Requirement
204.90 Culpability—General Substantive Issues
221.00 State Bar Act—Section 6106
Although the term "moral turpitude" has been defined very broadly, the Supreme Court has always required a certain level of intent, guilty knowledge, wilfulness, or, at the very least, gross negligence before labelling an attorney's conduct moral turpitude. Where respondent reasonably and in good faith believed that he had the authority to endorse his clients' former attorney's name to settlement drafts, and there was no evidence that respondent misused funds intended for clients or medical providers and no evidence of fraud, hearing judge correctly concluded that there was no clear and convincing evidence of moral turpitude.

[4] **162.90 Quantum of Proof—Miscellaneous**
165 Adequacy of Hearing Decision
204.90 Culpability—General Substantive Issues
In matter where record lacked any evidence of impropriety of respondent or respondent's staff in dealing with clients, case law requiring all reasonable inferences to be resolved in respondent's favor supported attribution of no base motives to respondent. Thus, in deciding to dismiss charges, hearing judge properly saw case as one involving a dispute between two attorneys over clients, files, and the first attorney's fee, and did not improperly fail to consider totality of respondent's conduct.

[5 a, b] **280.00 Rule 4-100(A) [former 8-101(A)]**
280.40 Rule 4-100(B)(3) [former 8-101(B)(3)]
280.50 Rule 4-100(B)(4) [former 8-101(B)(4)]
Supreme Court and review department look to elements of trust account rule, and their purposes, in determining whether a particular transaction violates the rule. Under this analysis, funds received by a member of the State Bar which are the subject of a medical lien held by the client's medical provider for services rendered in the matter for which the client hired the attorney are trust funds within the meaning of the trust account rule, for they are, in effect, funds held for the benefit

of clients. Similarly, funds of certain third parties which come into a lawyer's hands are required to be treated as trust funds.

[6 a-c] **280.00 Rule 4-100(A) [former 8-101(A)]**
280.40 Rule 4-100(B)(3) [former 8-101(B)(3)]
280.50 Rule 4-100(B)(4) [former 8-101(B)(4)]
State Bar Court can and should look to label and treatment of funds by attorney and client when considering whether they are trust or non-trust funds. However, it is the character and nature of the funds, not their label by either attorney or client, which must ultimately determine their status. Despite respondent's labelling of clients' prior attorney's claim for quantum meruit fees as a "lien," in the absence of adequate proof of creation of a lien, the funds claimed by the prior attorney for fees for services rendered were not trust funds within the meaning of the trust account rule.

[7 a, b] **280.00 Rule 4-100(A) [former 8-101(A)]**
280.40 Rule 4-100(B)(3) [former 8-101(B)(3)]
280.50 Rule 4-100(B)(4) [former 8-101(B)(4)]
Attorney fees for legal services already performed are personal obligations of a client, and funds held to pay them are not trust funds within the meaning of the trust account rule. A claim for attorney fees for past services has been raised to trust status within the meaning of the trust account rule only where such fees were legally recognized as a lien on the client's recovery.

[8] **199 General Issues—Miscellaneous**
In a contingent fee matter, the client has the power to discharge the attorney at any time, with or without cause, subject to the obligation to pay the discharged attorney the reasonable quantum meruit value of services rendered up to the time of discharge. If the discharged attorney has a lien it may be enforced in the quantum meruit amount. However, unless there is adequate proof that a lien for the discharged attorney's fees was created, the attorney does not enjoy the status of a lienholder with an interest in the client's recovery.

[9] **125 Procedure—Post-Trial Motions**
178.90 Costs—Miscellaneous
139 Procedure—Miscellaneous
Where disciplinary proceeding was dismissed due to State Bar's failure to bring forth clear and convincing evidence to support any of the charges, respondent was entitled by statute to reimbursement for the reasonable expenses of preparation for hearing, but State Bar Court was not authorized to award respondent any amount for attorney fees.

ADDITIONAL ANALYSIS

Culpability
Not Found
221.50 Section 6106
280.05 Rule 4-100(A) [former 8-101(A)]
280.45 Rule 4-100(B)(3) [former 8-101(B)(3)]
280.55 Rule 4-100(B)(4) [former 8-101(B)(4)]
Other
166 Independent Review of Record

OPINION

STOVITZ, J.:

After two days of trial, the State Bar Court hearing judge filed a lengthy, thoroughly-considered decision finding respondent H[1] innocent of charges that he engaged in any charged misconduct by authorizing an employee to simulate the signature of the clients' previous attorney when depositing to his trust account settlement drafts for two clients and by failing to reserve in trust, sums for the previous attorney's claim of fees. Finding no culpability whatever, the judge dismissed the proceeding and noted respondent's eligibility to recover the allowable statutory expenses of preparing for the hearing. (Bus. & Prof. Code, § 6086.10 (d).)

The State Bar examiner seeks our review, urging that the hearing judge made incorrect factual findings and that the evidence showed respondent's culpability on both charges. The examiner contends that respondent should be suspended for two years, stayed, on conditions including an actual suspension for nine months. Respondent urges us to adopt all findings below and the decision for dismissal.

[1] Our independent review of the record leads us to underscore the hearing judge's apt observations on page 28 of his 30-page decision: "This Court's interpretation of . . . *Shalant* v. *State Bar* (1983) 33 Cal.3d 485, is that a disciplinary proceeding is seldom the proper forum for attorney fee disputes. The reason for this is brought to bear in this case. The case before us arises from a dispute between attorneys which caused considerable bad blood. . . ." Indeed, there is no evidence that any sum which could be considered trust funds was mishandled by respondent or that his instruction to his employee to endorse the clients' former attorney's name to two settlement drafts was dishonest, corrupt or reflective of bad moral character. Since the dispositive facts rest largely on documentary evidence supplemented by respondent's uncontradicted testimony—all properly evaluated by the hearing judge—we have no valid reason to disturb the judge's essential findings and conclusions. Instead, with minor modifications, we adopt them and order the proceeding dismissed.

I. PROCEDURAL HISTORY

An amended notice to show cause ("notice") was filed November 19, 1990, charging respondent with two counts of violating Business and Professions Code section 6106[2] and with wilfully violating portions of the former trust account rule, rules 8-101(A)(2), 8-101(B)(3) and 8-101(B)(4), Rules of Professional Conduct.[3] Both counts of the notice charged the identical misconduct arising in about March 1989. Only the clients involved were different. We shall refer to one client as A and one as B. Essentially, respondent was charged with causing an employee to place the endorsement of the clients' previous lawyer ("X") on settlement drafts without X's "express authorization" and with failing to keep in trust the amount of fees due X, while knowing of X's "lien" claim.

The parties engaged in discovery and filed detailed pre-trial statements. On March 1, 1991, just a few days before the start of trial, respondent moved to dismiss the charges, contending that he had the authority to cause X's name to be endorsed to the settlement drafts, and, even if he were mistaken, that the examiner had fallen short of establishing moral turpitude as charged. Respondent also urged that X's claimed amount of fees was not the type of money which, by rule 8-101's terms, had to be placed or maintained in trust. In opposing respondent's dismissal motion, the examiner cited authorities for the proposition that funds held for a third person not the client are subject to rule 8-101, but the only authorities the examiner cited regarding liens concerned liens of medical providers for services rendered in

1. In view of our dismissal of this matter, we follow our practice of not identifying respondent by name. (See *In the Matter of Respondent D* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 517, 520, fn. 1.)

2. Unless noted otherwise, all references to sections are to the provisions of the Business and Professions Code.

3. Unless noted otherwise, all references to rules are to the Rules of Professional Conduct in effect from January 1, 1975, to May 26, 1989.

treating the clients for injuries and not of attorneys for their fees. Regarding the endorsement of X which respondent caused to be placed on the A and B settlement drafts, the examiner cited authorities that, absent express authority, a lawyer may not endorse a client's name to a draft.

After hearing argument on respondent's motion to dismiss, the hearing judge denied it and the case was tried. Although many documents were received in evidence and themselves established many of the events, the only witnesses called were respondent and D, X's office manager in early 1989. D's testimony went largely to the subject of the transfer of client files by X's office. On the factual issues central to the charges, respondent's testimony was uncontradicted.

II. THE FACTS

Respondent was admitted to practice law in California in 1981. In January 1989, respondent had a general civil practice with a plaintiff personal injury concentration and was the editor of a national magazine. He planned to cease practicing law several months later to devote more time to the magazine. About the same time, two non-attorney staff members left X's employ. One of these X employees, F, fluent in a foreign language, had been X's liaison with his clients who spoke that language. Respondent hired F and the other employee. About 10 of X's clients whose contact with X was through F traced F to respondent's office and asked respondent to take over their personal injury cases. On January 17, 1989, respondent agreed to do so. Shortly thereafter, he forwarded substitution of attorney forms to X signed by the clients and asked X for the clients' files. That was the start of trouble for both X and respondent, as X thought that respondent was stealing both his employees and his clients.[4] This in turn led to the "bad blood" which the hearing judge found to have developed between the two lawyers.

Respondent's January 1989 letters to X notifying him of A's and B's decisions to retain respondent included this text: "We will honor your lien for the reasonable value of legal services rendered by you up to the delivery of this letter. However, no work performed thereafter will be included in the computation of your lien." Nothing in these letters stated that X's claimed fees would be considered trust funds or held in a trust account.

Between January and March 1989, respondent expended much effort to secure the needed client files from X, including filing a superior court motion and a complaint with the State Bar.

In the meantime, respondent pursued settlements with the defendants' insurers in both the A and B cases. By March 15, 1989, he was able to settle both cases, even though he had not yet received X's file in the A case when he negotiated with the insurer a few weeks earlier.[5] Respondent was able to get the files for A's and B's cases by mid-March 1989. X took the position, through contemporaneous documents corroborated by D's testimony at trial, that he cooperated as fully with respondent as was reasonable, given the move of X's office. X also claimed that respondent acted unreasonably in not affording X sufficient time for the file transfer and in not cooperating better with X on this subject.

Respondent settled A's case on March 14, 1989, for $8,000. The insurer's draft in that case was made payable jointly to A, respondent and X. The same day, respondent placed a call to X's office. He was unable to speak to X but he left a message with one of X's employees that he had settled the A case for $8,000 and asked that X advise when X would be available to endorse the settlement drafts. The next day, respondent telephoned X's office again to convey a similar message with regard to the settlement of the B case for $13,000.

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4. X's reaction to the 10 client substitutions was established by D's testimony. The hearing judge did not find nor did any evidence show that there was any ethical impropriety in respondent hiring X's former employees or in accepting X's former clients. The record reveals that F left X's employ in part because of concern over X's pending personal bankruptcy.

5. Respondent testified that as the insurer in the A case was eager to settle, that insurer sent respondent copies of medical records he needed.

In respondent's experience, most attorneys who had formerly represented his clients were eager to talk to him when a case settled for they would then receive the fee for their earlier services. However, when X did not return respondent's calls in either matter, respondent sent X a three-page letter concerning the A and B cases and one additional case. This letter was dated March 16, 1989, and received by X on March 20, 1989. Respondent acknowledged in the letter that X claimed a lien of $1,861.50 for his fees in the A case and $2,092.25 in the B case. Respondent disputed in detail the merits of X's claim for such large fees, by asserting specifics of how he believed X's claim for services was excessive in each case. Respondent proposed to pay X $600 in the A case and $1,200 in the B case. Respondent concluded his letter by stating that unless he received word directly from X, regarding the three cases discussed, within three days of March 16, he would assume that X agreed with the proposed amounts. Respondent also stated, "I will further assume that you [X] are authorizing us to deposit the drafts received upon notice to you of their receipt and in exchange for post-dated drafts from our clients [sic] trust accounts in the [$600 and $1,200 respective amounts]."

Respondent did not hear from X by the deadline in his letter. He waited until March 22 and instructed one of his employees to endorse X's name to each draft and deposit them in his trust account. The parties stipulated that the $8,000 draft in the A case was deposited on March 24, 1989, and the $13,000 draft in the B case was deposited on March 29, 1989. On March 23, respondent received a letter from X dated March 21 concerned only with defending X's earlier claim for fees. X's letter did not object to respondent's earlier-stated intent to deposit the drafts.

Respondent had also learned by March 1989 that, in the A matter, X held $3,015 in his trust account representing medical payment insurance proceeds he had received for A. In his March 16, 1989, letter, respondent requested that X forward this sum to him for A. Eleven days later, respondent wrote to X telling him that he had deposited the draft in the A case and had paid A his share of the settlement funds, and that, since X had not forwarded the $3,015 medical payment amount, respondent was applying $600 (the sum he had determined was proper for X's fees) in partial satisfaction of the medical payment amount X owed A.

On April 3, 1989, X wrote respondent stating that he (X) had never authorized respondent to sign X's name to any draft or check. He repeated that statement in a certified mail letter to respondent dated April 21, 1989, adding that his lien claims for fees were not addressable except by arranging for neutral arbitration, and, pending that, by placing the amount of X's claims in trust. On April 14, 1989, X forwarded respondent a trust account check for $1,153.50, representing the $3,015 medical payment amount minus the amount X claimed for his lien. In a cover letter, X wrote that he would hold the $1,861.50 balance in trust pending agreement.

About three months later, respondent and X settled their disputes over the attorney fees X claimed in the A and B cases and the medical payment proceeds X held in the A case. Respondent testified that X never expressly authorized him to endorse his name to a draft. Respondent never assumed that he could endorse X's name to the settlement drafts without authority, but he claimed he had the authority by virtue of X's silence in response to respondent's communications. Respondent further testified that had X objected timely to respondent endorsing X's name on the drafts, respondent would not have done so. He was concerned that X's pending personal bankruptcy could tie up for some time any files or funds which X had in his possession and since the insurers were eager to settle the clients' cases, respondent did what he thought was needed to serve his clients. The State Bar introduced no evidence of client A or B disputing any portion of their respective recoveries nor of either client objecting to respondent's handling of any portion of them.

III. DISCUSSION

A. Burden of Proof and Scope of Review.

[2] The Supreme Court has held that disciplinary charges must be proved by the State Bar examiner by clear and convincing evidence and we have followed its directive. (See *Arden* v. *State Bar* (1987) 43 Cal.3d 713, 725, and cases cited; *In the Matter of Temkin* (Review Dept. 1991) 1 Cal. State Bar Ct.

Rptr. 321, 329.) Our review of the record is independent of the hearing judge; but as to findings of fact resolving issues of testimony, we must give great weight to the credibility determinations of the hearing judge who evaluated respondent's testimony in the light of all evidence. (Rule 453, Trans. Rules Proc. of State Bar; *In the Matter of Respondent E* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 732, 734; *In the Matter of Respondent A* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 255, 261.) It is also well-settled that all reasonable doubts must be resolved in favor of the accused attorney. (See *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 694, citing *Kapelus* v. *State Bar* (1987) 44 Cal.3d 179, 183.) If equally reasonable inferences may be drawn from a proven fact, the inference leading to innocence must be chosen. (See *Himmel* v. *State Bar* (1971) 4 Cal.3d 786, 793-794.)

The record is replete with evidence of considerable hostility of both respondent and X toward each other in 1989. While the feud between them gave neither any latitude regarding compliance with the State Bar Act or the Rules of Professional Conduct, neither does it prove that respondent committed the charged violations.

B. The Endorsements of X's Name to the A and B Settlement Drafts.

[3a] Essentially, the hearing judge found that X did not expressly authorize respondent to endorse his name to the A and B drafts; but prior to the endorsement of these drafts, X did not object to respondent's intended deposit of the drafts or the authority to endorse his name. After reviewing the Supreme Court's definitions of moral turpitude under charged section 6106 and applicable decisional law, including on issues of commercial and agency law, the judge concluded that respondent reasonably believed that he had the authority to endorse X's name to the drafts and was not culpable of any act of moral turpitude.

In disputing the result reached by the hearing judge, the examiner argues four points. She contends that respondent did not disclose enough facts to put X on notice that respondent would endorse his name to the drafts; that respondent did not testify or argue truthfully to the hearing judge about the facts regarding his receipt of B's file; that respondent was prepared to endorse X's name to another draft after X wrote respondent in April 1989 that he was not authorized to do so; and that the hearing judge did not consider all of respondent's conduct in its entirety, including circumstances about how F and clients A and B came to be involved with respondent. We have concluded that the examiner's points are without merit.

Regarding respondent's disclosure to X, the record warrants an additional finding which we will make: "Prior to respondent's letter of March 16, 1989, he made two telephone calls to X's office and informed a staff member of X that he wished to arrange for respondent to endorse settlement drafts in the A and B cases. No one from X's office returned respondent's calls." Respondent's testimony about his telephonic notices to X's office was uncontradicted. Respondent's March 16 letter and the two previous phone calls, taken together, conveyed ample information to X that respondent proposed to take necessary action to endorse the drafts, include placing X's name on them. With this one added finding, we adopt the remaining findings and conclusions of the hearing judge pertaining to the endorsement of the A and B drafts.

In *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387, 397-398, the examiner representing the State Bar took the position that the simulation by an attorney of a client's signature when endorsing a draft, without indicating that the attorney was signing under power of attorney, was an act of moral turpitude or deceit violating section 6106. We held that, under the circumstances, it was not. As we discussed in *Lazarus*, the attorney had authority under the retainer agreement to endorse his client's name, the draft was promptly placed in the attorney's trust account and there was no evidence of intent to defraud. **[3b]** Here, too, we have no evidence of misuse of any of the funds intended for the clients or medical providers and no evidence of fraud. Neither *Lazarus* nor any of the Supreme Court cases cited by it or the examiner hold that an attorney engages in moral turpitude whenever express authority to endorse is lacking, without regard to the apparent authority the attorney may believe in good faith he or she has obtained. Respondent testified

that, in his experience, previous attorneys who had represented his clients were eager to speak with him upon his settlement of cases in which they had earlier rendered services. It was therefore reasonable for respondent to have sought to contact X twice by telephone and then in writing to seek permission to endorse X's name to the drafts. Respondent waited ample time before depositing the drafts. X made no objection prior to that time.

Although the recent cases of *Sternlieb* v. *State Bar* (1991) 52 Cal.3d 317 and *Dudugjian* v. *State Bar* (1991) 52 Cal.3d 1092 focus on money offense matters and did not arise from charges of an attorney's dishonesty in making representations, they are nevertheless instructive on the issue of whether moral turpitude is involved in a case such as this one. In both cases, the Supreme Court found that the respective attorneys' claim to use of trust funds, although unreasonable or unauthorized, was not dishonest. The Court therefore declined to treat the offenses as the violation of section 6106 by a wilful misappropriation of funds, but rather only as a wilful violation of rule 8-101.

The distinctions drawn by the Supreme Court in *Sternlieb* and *Dudugjian* are also reflective of that Court's past holding in the area of conduct involving deceit and misrepresentation. **[3c]** Although the term "moral turpitude" found in section 6106 has been defined very broadly by the Court (e.g., *Chadwick* v. *State Bar* (1989) 49 Cal.3d 103, 110), the Supreme Court has always required a certain level of intent, guilty knowledge or wilfulness before placing the serious label of moral turpitude on the attorney's conduct. (See *Sternlieb* v. *State Bar*, *supra*, and cases discussed in *In the Matter of Temkin*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 330.) At the very least, gross negligence has been required. (See *Giovanazzi* v. *State Bar* (1980) 28 Cal.3d 465, 475-476; *In the Matter of Wyrick* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 83, 91.)

[3d] In this case, the hearing judge was in an appropriate position to assess the issues of respondent's intent, state of mind, good faith and reasonable beliefs and actions—all important issues bearing on whether moral turpitude was involved in this matter. The judge concluded that the proof fell short of moral turpitude here. As we stated *ante*, we are obligated to give great weight to the hearing judge's findings and conclusions on this subject. Since they are supported by uncontradicted evidence of respondent's attempts to inform X of his intentions followed by X's silence, we uphold the hearing judge's conclusion that the State Bar failed to prove by clear and convincing evidence that respondent's actions gave rise to a violation of section 6106.

Regarding the examiner's claim that respondent made false statements below about his receipt of the B case file, the hearing judge made no such finding and we conclude that such a finding would not be warranted. We read the record as showing genuine confusion on the part of respondent as to when he received B's file, an issue collateral to the charges in this case. That respondent might have written to X again in April 1989, proposing to endorse X's name to another draft, does not prove the charge. There was no evidence that respondent caused any further endorsements of X's name to be placed on drafts after the two March 1989 endorsements.

[4] Finally, we disagree with the examiner's criticism that the judge did not consider the totality of respondent's conduct. The examiner's contrary view in attributing to respondent improper, selfish motives rests on her choice of inferences to draw from the record. Given the lack of any evidence of impropriety of respondent or of his staff in dealings with the clients, at least equally reasonable inferences support the attribution of no base motives to respondent. We have already cited the law which requires all reasonable inferences to be resolved in respondent's favor. That the hearing judge saw this case for what the record reveals it was—a bitter scrap between two attorneys over clients, files, and the first attorney's fee—is a matter for commendation, not criticism of the hearing judge.

C. The Nature of X's Claim for Fees.

As to the nature of X's claim for fees, the hearing judge found that respondent withheld no funds from the A and B drafts for X's claimed fees for the reason that X held more in medical payment amounts than the amount of his claimed liens. The judge concluded in essence that once respondent received the A and B

settlements and deposited the drafts in his trust account, paid the clients' medical expenses and distributed to the clients their remaining full shares of their settlements, all that was left were attorney fee claims of respondent and X, sums which were not of trust fund status within the meaning of charged rule 8-101.

We adopt the hearing judge's findings and conclusions as to this portion of the charges with the minor exception that we modify finding 28 to find that respondent believed that his estimate of what X was owed in fees for the A and B cases combined was less than the amount X retained in medical payments in A's case.

Without coming to grips with the extended discussion of the law by the hearing judge in his decision as to the non-trust nature of X's attorney fee, the examiner nonetheless urges that we reverse the judge's conclusion and find respondent culpable of several violations of rule 8-101. Reduced to its essence, the examiner's reasoning is this: an attorney owes fiduciary duties to third parties who have claims to funds which the attorney receives, X was a third party who made a claim, therefore the funds are trust funds. We reject the examiner's position.

[5a] Over the years, the Supreme Court and now this review department, following that Court's precedent, have looked to the elements of rule 8-101 and its predecessor, rule 9, and their purposes, in determining whether a particular transaction violated the rule. (See, e.g., *Guzzetta* v. *State Bar* (1987) 43 Cal.3d 962, 976-979; *Shalant* v. *State Bar*, *supra*, 33 Cal.3d at p. 489; *Baranowski* v. *State Bar* (1979) 24 Cal.3d 153, 163-164; *Silver* v. *State Bar* (1974) 13 Cal.3d 134, 144-145; *In the Matter of Lazarus*, *supra*, 1 Cal. State Bar Ct. Rptr. at pp. 398-399; *In the Matter of Mapps* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 1, 10-11.) As pertinent to this case, rule 8-101(A) considers as trust funds: "All funds received or held for the benefit of clients by a member of the State Bar..., including advances for costs and expenses." Subdivision (A)(2) of the rule requires deposit in trust of funds "belonging in part to a client and in part presently or potentially" to the attorney and requires withdrawal of the attorney's portion from the trust account as soon as the attorney's interest becomes fixed, unless an attorney-client dispute arises.

[5b] Following the Supreme Court's analysis, we have held that funds received by a member of the State Bar which were the subject of a medical lien held by the client's medical provider for services rendered in the matter for which the client hired the attorney were trust funds within the meaning of the rule, for they were, in effect, funds held for the benefit of clients. (*In the Matter of Robins* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 708, 712; *In the Matter of Mapps*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 10.) Similarly, the Supreme Court has recognized that the funds of certain third parties which come into a lawyer's hands are required to be treated as trust funds. (See, e.g., *Johnstone* v. *State Bar* (1966) 64 Cal.2d 153, 155-156.)

[6a] We can and should look to the label and treatment of the funds by attorney and client when considering whether they are trust or non-trust funds. However, we hold that it is the character and nature of the funds, not their label by either attorney or client, which must ultimately determine their status. Thus, a client who makes payments to an attorney solely in response to a bill for legal fees for services already rendered cannot transform those monies into trust funds by so labelling them. Similarly, an attorney who has received payment for the court filing fee for a client's lawsuit cannot label those funds as personal in nature merely because the lawsuit will not be filed for some time but the attorney has pressing office expenses to cover in the meantime. This analysis applies equally to third party claims. No one would seriously assume that a client's general creditor can reach monies held by the client's attorney, absent an enforceable lien or judgment.

[6b] In this case, we believe that the examiner may have placed too much weight on respondent's own labelling of X's claim for quantum meruit fees as a "lien" coupled with his promise in his March 16, 1989, letter, to pay the reasonable value of X's claim for fees from respondent's trust account. As we have seen, bona fide lien claims of those such as medical providers are given trust status.

[7a] The general result reached by the authorities considering the question is that attorney fees for legal services already performed are personal obligations of a client, and funds held to pay them are not trust funds within the meaning of rule 8-101. In that

connection, we emphasize *Shalant* v. *State Bar*, *supra*, 33 Cal.3d 485, discussed by the hearing judge. In a case very similar to this one, Shalant settled the client's personal injury case and offered what he believed to be a quantum meruit fee to the client's previous attorney. Shalant then disbursed all of the rest of the money to his client, minus Shalant's own fee. The court concluded that the record did not show that the previous attorney's claim for services was impressed with trust fund status under rule 8-101. The court noted that the client had not directed that the funds be used in a particular manner and the claim on the funds was made by the other attorney, not the client.

In attempting to distinguish the hearing judge's discussion of *Shalant*, the examiner continues to blur claims of a previous attorney's past due fees with duly established medical lien claims. **[7b]** The only case we are aware of which has raised attorney fees for past services to a trust status within the meaning of rule 8-101 is the recent case of *Baca* v. *State Bar* (1990) 52 Cal.3d 294. There the Supreme Court determined that fees to three law firms were to come from a client's worker's compensation award, and that applicable law recognized an attorney fee claim in a worker's compensation matter as a lien on the injured's award and as coming out of the injured's recovery. (*Id.* at p. 299, fn. 3.)

As the hearing judge found in his decision, A and B discharged X before X had completed services for A and B under contingent fee contracts. **[8]** The courts have long recognized a client's power to discharge an attorney at any time, with or without cause, subject to the obligation to pay the discharged attorney the reasonable value of services rendered up to the time of discharge—so-called "quantum meruit." (*Fracasse* v. *Brent* (1972) 6 Cal.3d 784, 790-792; *Cazares* v. *Saenz* (1989) 208 Cal.App.3d 279, 285.) **[6c]** We agree with the hearing judge's extended discussion of case law concluding that although the limitation of a fee obligation to quantum merit does not bar enforcement of a lien which has been created (*Weiss* v. *Marcus* (1975) 51 Cal.App.3d 590, 598), there must be adequate proof of lien creation since it is an unsettled question whether a general or "common law" charging lien exists in California. (See *Hulland* v. *State Bar* (1972) 8 Cal.3d 440, 447, fn. 8, citing *Isrin* v. *Superior Court* (1965) 63 Cal.2d 153, 157; see also 1 Witkin, Cal. Procedure (3d ed. 1985), Attorneys, §§ 142-144, pp. 165-166.) The hearing judge concluded correctly that no evidence was presented proving that X was a lienholder with an interest in the recovery. The examiner has cited no authorities justifying a contrary result.

IV. CONCLUSION AND DECISION

[9] Since we have reached the same conclusion as the hearing judge, that the State Bar has failed to bring forth clear and convincing evidence to support any of the charges made against respondent, we order the proceeding dismissed. Although respondent is entitled to reimbursement for the reasonable expenses of preparation for hearing, in an amount to be determined by the State Bar Court, we are not authorized to award any amount for attorney fees as respondent has requested. (Bus. & Prof. Code, § 6086.10 (d).)

We concur:

PEARLMAN, P.J.
NORIAN, J.